UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

AMY E. TRAVIS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CAUSE NO. 3:03-CV-344 PS
	)	
VULCAN MATERIALS COMPANY,	)	
	)	
Defendant.	)	

ORDER

Plaintiff, Amy Travis, was fired by her former employer, Vulcan Materials Company, and then brought this action alleging a hostile work environment and sex discrimination in violation of Title VII. Plaintiff has presented no evidence that she endured a hostile work environment so summary is granted as to that claim. However, because there are genuine issues of material fact with respect to Plaintiff's sex discrimination claims, the Defendant's Motion is granted in part and denied in part.

I. FACTS

Amy Travis began work at the Francesville quarry for Vulcan Materials Company as a scale clerk in June of 1999.[1] Through the course of her employment with Vulcan, Travis's supervisors changed and her responsibilities in the scale office fluctuated as different employees moved through the office. Travis was hired by Troy Banks, the superintendent of the Francesville quarry. After Banks was terminated in July of 2000, another person became her supervisor, but that person was promoted and in August of 2001, Todd Shultz became Travis's supervisor. Shultz was Travis's supervisor and the superintendent of the Francesville quarry for the remainder of her employment with Vulcan.

[1] Many of the facts are in dispute so the account here is in the light most favorable to the Plaintiff.

As far as Travis knew, she had an excellent relationship with her first and second supervisors, and her relationship with Schultz was also excellent until she went on her medical leave. During the years she worked there, she was consistently given good performance evaluations and salary increases. In fact, Schultz was so positive about Travis's work that he made a collage for her out of words clipped from newspapers and magazines which praised her ability to "get results" and thanked her for her "rock solid service." (Travis Aff. Ex 6).

When she first began work for Vulcan as the scale clerk, Travis weighed the trucks that came across the scale loaded with stone, answered the phone and took messages, and did the end of the day paperwork. Martha Marion, a plant clerk, and Ron Kamstra and Mike Boyd, two salesmen, were the others who worked in the scale office with Travis at that time. Kamstra was responsible for dealing with issues of customer service at the Francesville quarry.

After Travis had been with Vulcan for over a year, the plant clerk, Marion, left Vulcan because of illness, and for the next year, in addition to her scale clerk duties, Travis was responsible for the plant clerk duties. These duties included purchasing, payroll, equipment and fuel maintenance, end of the month paperwork and customer sales and dispatch. It was August of 2001 when Travis believed that her title was actually changed to plant clerk and dispatcher. To fulfill these duties, Travis worked a twelve hour shift five days a week and also every Saturday. During this time, Travis was only assisted part-time by Cyndi Long.

In November 2001, Susan Case was hired to assist Travis as a scale clerk. But she quit about three to four weeks after she started. Thus, Travis was again in the office performing both the plant and scale clerk duties until March of 2002, when Gloria Wharff was hired as a scale clerk. However, Wharff lasted only two months; she was fired by Schultz for performance reasons. A third scale clerk, Jason Shepard, was hired after this. As with Case and Wharff, Travis met Shepard briefly during the time of the interview and thought that he seemed nice.

Travis trained Shepard to perform the role of scale clerk as well as her duties as plant clerk because she was going to be on medical leave for about six weeks.

Difficulties for Travis began before she even returned from medical leave. A few days before she was to come back to work, Todd Schultz asked her over the phone, "Are you ever going to bother to come back to work?" (Plaintiff's Dep. at 271). Then, the day before she was to return to work from her medical leave, he sarcastically asked her over the phone, "Are you ever going to return to work?" (Plaintiff's Dep. at 271). As a result of her phone call, she attended a meeting that day with Schultz and she learned that Vulcan was going to reduce her hours. Schultz explained to her that the office really did not need a full time scale clerk and a full-time plant clerk/dispatcher and in an effort to save money, both her hours and Jason Shepard's hours would be reduced. They both would now only come in nine hours per day and only every other Saturday for seven hours.

Travis was given a choice of working the early shift or the late shift. She chose the latter shift, beginning at 8:00 a.m. She was also asked to choose if she wanted to perform the duties of the plant clerk/dispatcher or the scale clerk. She chose to be the plant clerk/dispatcher, even though it appears that she would still have to perform some of the scale clerk duties, as someone had to do it when Shepard was not there. Likewise, Shepard had to perform some of the dispatch duties when Travis was not there. Travis expressed her concern to Shultz over sharing the dispatch duties because she felt communication would be much more difficult with people sharing that job. Additionally, according to Travis, Schultz had a hostile attitude while explaining to her that her hours would be reduced.

With these new conditions in place, Travis officially returned to work on September 11, 2002. From the start, the environment was very different than when she had left. Before she left, the office banter had been friendly, but when she returned she was no longer even greeted in the morning by Schultz, Kamstra, or Shepard. The new schedule and sharing of dispatch duties also proved difficult. She did not feel that Shepard was doing his share of the end of the day

paperwork and she felt he sometimes failed to clearly communicate to her what had happened during his dispatch duties in the morning. Only a few days after she was back, there was a conflict about the end of the day paperwork. Because this duty had traditionally fallen to the scale clerk, Travis believed that this was Shepard's duty. She went to Schultz to request that they share this duty, but Schultz responded by yelling that if she wanted to act that way, then she would be demoted and he would give Shepard the hours from open to close and she would only be allowed to work eight hours a day. He made it clear to her that she should be the one doing the paperwork.

This was not the only responsibility that Travis covered for Shepard. There were incidents with customers that occurred that Travis had to attempt to fix. According to Travis, Shepard had sent material that a customer named George Wirtz needed to the wrong location. When Wirtz called, Shepard gave the call to Travis for her to handle, saying, "Have fun." She found that Wirtz was very upset that the material was sent to the wrong location. Salesman Ron Kamstra witnessed the situation, but no disciplinary action was taken against Shepard. According to Travis, this episode cost Vulcan money.

In contrast to this situation, Schultz threatened Travis with her job when she alerted him to a problem with Shepard sending trucks out overweight. He pointed his finger at her, slammed his fist on the desk and told her that she "had an attitude," that she "paraded around the office" when she obtained a cash drawer from Shepard's work area, that Shepard was a "perfect employee" and doing nothing wrong, and that if she did not stop making complaints about Shepard she would no longer have a job.

Travis was also yelled at another time after she tried to explain that she had completed one of the items on a list of work to do. Schultz yelled at her saying, "I told you I wanted you to

put the fucking labels on the fucking file drawers." But she admits that Schultz occasionally yelled and used profanities with other employees.

Travis also alleges some inappropriate remarks that she interprets as involving sex. For instance, Schultz made a comment to her husband that no woman should be the breadwinner in any family. Her understanding was that he was implying that male workers would be treated differently because they are breadwinners. Schultz also made a comment to the effect that Travis did not understand the expenses of having children because she did not have any. She also saw disparity in the manner in which he discussed problems with her and Shepard. If he had a problem with her, Schultz talked to her in the office while she was running the scale and answering the phone. By contrast, when he had an issue with Shepard, they would leave the office together and ride around in Schultz's truck for two hours or go into his office to discuss it.

By this time she had already filed a complaint against Schultz with the company and although work was tense, she continued to work. However, right before Thanksgiving of that year, an incident occurred that led to Travis's termination. On November 26, trucks arrived from Double O Trucking to load up. One or two of the trucks arrived just before 4:15 and two or three more arrived at 4:20 to be loaded. Vulcan's policy was to not begin loading the trucks after 4:15 unless permission was given by the superintendent of the quarry. In this instance, Travis was unable to reach any of the supervisors to get permission, so she sent the trucks away without allowing them to fill up. A representative of Double O Trucking, Michelle Wood, called and asked that the trucks be allowed to fill up. Wood explained that Shepard had previously told her she had until 4:45 to get the trucks there. Travis explained the policy of not loading the trucks after 4:15, and according to Travis, Wood continued to yell at her. Travis hung up on her, and when Wood called back and yelled at her again, Travis hung up on her again. Travis was suspended after this and a few weeks later she was terminated.

II. DISCUSSION

Amy Travis has asserted sex discrimination and hostile work environment claims under Title VII of the Civil Rights Act. She maintains that Vulcan discriminated against her when she was demoted and her hours were reduced. She also argues that Vulcan discriminated against her when she was terminated. Finally, she claims she was subject to a hostile work environment from the time she returned from medical leave.

A. Summary Judgment Standard

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party seeking summary judgment carries the initial burden of demonstrating an absence of evidence to support the position of the non-moving party. *Doe v. R.R. Donnelley & Sons Co.*, 42 F.3d 439, 433 (7th Cir. 1994). The non-moving party must then set forth specific facts showing there is a genuine issue of material fact and that the moving party is not entitled to judgment as a matter of law. *Anderson v. Liberty Lobby*, 477 U.S. 242, 252 (1986). A genuine dispute about a material fact exists only if the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986).

In making this determination, the Court must draw every reasonable inference from the record in the light most favorable to the non-moving party. *Haefling v. United Parcel Serv., Inc.,* 169 F.3d 494, 497 (7th Cir. 1999). The non-moving party must support its contentions with admissible evidence and may not rest upon mere allegations in the pleadings or conclusory statements in affidavits. *Celotex,* 477 U.S. at 324. The plain language of Rule 56(c) mandates the entry of summary judgment against a party who fails to establish the existence of an element

essential to its case on which the party will bear the burden of proof at trial. The production of only a scintilla of evidence will not suffice to oppose a motion for summary judgment. *Anderson*, 477 U.S. at 252.

B. Travis's Sex Discrimination Claims

Travis's Complaint alleges that she was discriminated against when her hours were reduced causing a substantial reduction in her take home pay and when she was terminated. Title VII makes it unlawful for an employer "to fail or refuse to hire or discharge any individual, or to otherwise discriminate against any individual . . . because of such individual's race, color, religion, sex, or national origin. . ." 42 U.S.C. § 200e-2(a)(1).

In order to succeed on a Title VII claim, a plaintiff must prove that he was intentionally discriminated against in an employment action. *Jackson v. E.J. Brach Corp.*, 176 F.3d 971, 982 (7th Cir. 1999). Such intentional discrimination can be proven by either the direct or the indirect method. *Id*. Under the direct method, there are two types of permissible evidence. First, there is direct evidence, or evidence that, if believed by the trier of fact, would prove the fact in question "without reliance on inference or presumption." *Rogers v. City of Chicago*, 320 F.3d 748, 753 (7th Cir. 2003) (internal quotation omitted). Direct evidence "essentially requires an admission by the decision-maker that his actions were based upon the prohibited animus." *Id.* (internal quotation omitted). For obvious reasons, courts rarely encounter direct evidence. *Id.*

The second type of evidence permitted under the direct method of proof relies more on circumstantial evidence and allows a plaintiff to prevail by constructing a "convincing mosaic" of circumstantial evidence that "allows a jury to infer intentional discrimination by the decisionmaker." *Rhodes v. Illinois Dept. of Transp.*, 359 F.3d 498, 504 (7th Cir. 2004) (citing *Troupe*, 20 F.3d at 737). The circumstantial evidence, however, "must point directly to a discriminatory reason for the employer's action." *Adams v. Wal-Mart Stores, Inc.*, 324 F.3d 935, 939 (7th Cir. 2003).

There are three types of circumstantial evidence under the direct method. Each type can be used on its own or in conjunction with the other types of circumstantial evidence to establish discrimination. *Troupe*, 20 F.3d at 736. The first category consists of "suspicious timing, ambiguous statements oral or written, behavior toward or comments directed at other employees in the protected group, and other bits and pieces from which an inference of discriminatory intent might be drawn." *Id.* The second type requires the plaintiff to show that the employer systematically treated similarly situated employees outside the protected class better. *Id.* The third type is evidence that the plaintiff was qualified for the position in question but passed over in favor of a person not having the forbidden characteristic and that the employer's stated reason for its decision is "unworthy of belief, a mere pretext for discrimination." *Id.*

We find that there are genuine issues of material fact that preclude summary judgment on Plaintiff's claim of sex discrimination. Those questions include:

1. Did Vulcan treat similarly situated employees outside of Plaintiff's protected class differently?
2. Were Vulcan's reasons for reducing Plaintiff's hours (and thus her income) and its reasons for terminating Plaintiff a mere pretext for discrimination?
3. Did Vulcan take adverse employment actions against Plaintiff based in whole or in part on discriminatory intent?

Defendant's motion for summary judgment is therefore denied on Plaintiff's claim of sex discrimination.

C. Hostile Work Environment

Travis also alleges that she was subjected to sexual harassment in the form of a hostile work environment. In her response to summary judgment, there is nary a word about sexual harassment. *See e.g.*, *Bombard v. Fort Wayne Newspapers, Inc.,* 92 F.3d 560, 562 (7th Cir.

1996) (plaintiff abandoned claim after failing to respond to argument in motion for summary judgment). Even though Plaintiff failed to address the hostile work environment claim in her response to summary judgment, we will nonetheless analyze this claim.

To establish a *prima facie* case of hostile work environment sexual harassment, a plaintiff must demonstrate that: (1) she was subjected to unwelcome sexual harassment; (2) the harassment was based on sex; (3) the sexual harassment had the effect of unreasonably interfering with the plaintiff's work performance in creating an intimidating, hostile or offensive working environment that affected seriously the psychological well-being of the plaintiff; and (4) there is a basis for employer liability. *Robinson*, 351 F.3d at 328-29; *see also Parkins v. Civil Constructors of Ill., Inc.*, 163 F.3d 1027, 1032 (7th Cir. 1998); *Hall v. Bodine Elec. Co.*, 276 F.3d 345, 355 (7th Cir. 2002). The third prong of the prima facie case requires both a subjective and objective inquiry, requiring the court to ask whether a reasonable person would find the environment hostile. *Robinson*, 351 F.3d at 329.

For workplace conduct to constitute a hostile work environment actionable under Title VII, the harassment "must be sufficiently severe or pervasive 'to alter the conditions of [the plaintiff's] employment and create an abusive environment.'" *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 65 (1986) (citation omitted). The objective test is measured by a reasonable person's perception of the totality of the circumstances including "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Harris v. Forklift Sys, Inc.*, 510 U.S. 17, 21 (1993).

Distinguishing a workplace that is truly hostile from one that is merely unpleasant can be difficult. "Not every unpleasant workplace is a hostile environment. The occasional vulgar banter, tinged with sexual innuendo, or coarse or boorish workers would be neither pervasive nor offensive enough to be actionable. The workplace that is actionable is the one that is hellish." *Rogers v. City of Chicago*, 320 F.3d 748, 752 (7th Cir. 2003) (quotation omitted). In *Rogers*, the

Seventh Circuit held that the plaintiff, a female police officer, could not establish an objectively severe environment even though a Sergeant at the station commented that he would "like to be that FOP [Fraternal Order of Police Book] in [her] back pocket"; told her "your breasts look nice in that turtleneck"; interfered with her response to calls and preparation of reports; and instructed her to put a document in a box, stating "put this in the bin so I can watch you walk over and put it in." *Id*. at 750. The Court found that the incidents of harassment were not egregious enough to constitute a hostile work environment because the plaintiff could "prove little more than that she encountered a number of offensive comments over a period of several months." *Id.* at 753.

Here, a close examination of the record reveals that Travis cannot establish that she worked in an objectively hostile environment or that she was harassed because of her sex. Based on the evidence before it, this Court cannot conclude that a reasonable person would view Travis's workplace as abusive. That is, while Travis may have been experiencing a less than pleasant work environment, a reasonable person would not construe the environment to be so hostile that it had the effect of unreasonably interfering with her work. The Court must therefore grant summary judgment on Travis's hostile work environment claim.

III. CONCLUSION

For the foregoing reasons, Defendant's Motion for Summary Judgment [Docket No. 54] is **GRANTED IN PART AND DENIED IN PART**. Defendant's Motion to Strike [Docket No. 77] is **DENIED** as moot.

SO ORDERED.

ENTERED: November 19, 2004

s/ Philip P. Simon
PHILIP P. SIMON, JUDGE
UNITED STATES DISTRICT COURT